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No. _____

In The

Supreme Court of the United States

October Term, 1988

JOHN R. WILSON, ET AL.,

Cross-Petitioners,

vs.

THE OMAHA INDIAN TRIBE,

Cross-Respondent

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

ROBERT J. BECKER and
DONALD J. BURESH
8805 Indian Hills Drive
Suite 325
Omaha, Nebraska 68114
(402) 393-5421
Counsel for John R. Wilson Charles E. Lakin, Florence Lakin and Harold Jackson

PETER J. PETERS
233 Pearl Street
Council Bluffs, Iowa 51502
(712) 328-3157
Counsel for RGP, Inc. and Otis Peterson

THOMAS R. BURKE and
LYMAN L. LARSEN
10306 Regency Parkway Drive
Omaha, Nebraska 68114
(402) 397-0203
Counsel for John R. Wilson and Harold Jackson

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

Whether Title 25, U.S. Code § 194, which places the burden of proof on the "white person" in a suit by "an Indian" over title to property, is unconstitutional because it constitutes invidious racial discrimination in favor of Indians and Indian Tribes, and against other person in violation of the due process clause of the Fifth Amendment.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the courts below are: The United States of America and the Omaha Indian Tribe, who were the plaintiffs, and John R. Wilson (the personal representative of Roy Tibbals Wilson, now deceased), Charles E. Lakin, Florence Lakin, Harold Jackson, RGP, Inc., and Otis Peterson, who were defendants and who are the Cross-Petitioners herein. Other defendants in the proceedings below are Darrell L. Sorenson, Harold Sorenson, Harold M. Sorenson, Luea Sorenson, Travelers Insurance Company, the State of Iowa, and the State Conservation Commission of the State of Iowa.

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CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

John R. Wilson, Charles E. Lakin, Florence Lakin, Harold Jackson, RGP, Inc. and Otis Peterson, who are respondents as to the Petition of the Omaha Indian Tribe in No. 88-1426 cross-petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion and judgment of the court of appeals is reproduced as Appendix C to the Petition of the Omaha Indian Tribe in No. 88-1426. The opinion is reported as

Omaha Indian Tribe v. Jackson, 854 F.2d 1089 (8th Cir. 1988). The Final Judgment and Decree of the district court is Appendix A to the Petition of the Omaha Indian Tribe. The most recent memorandum and order of the district court is reported as *United States v. Wilson*, 578 F.Supp. 1191 (N.D. Iowa 1984). Other opinions of the lower courts in this case are: *United States v. Wilson*, 433 F.Supp. 57 (N.D. Iowa W.D. 1977); *United States v. Wilson*, 523 F.Supp. 874 (N.D. Iowa W.D. 1981); *Omaha Indian Tribe v. Wilson*, 575 F.2d 620 (8th Cir. 1978); *Omaha Indian Tribe v. Wilson*, 614 F.2d 1153 (8th Cir. 1980); *United States v. Wilson*, 707 F.2d 304 (8th Cir. 1982). This case has also been before this Court, *Wilson v. Omaha Indian Tribe*, 442 U.S. 653 (1979).

JURISDICTION

On February 28, 1989, the Omaha Indian Tribe filed a timely Petition For Writ of Certiorari in No. 88-1426 asking for review of the judgment of the court of appeals entered on August 12, 1988. The Tribe invoked the jurisdiction of this Court under 28 U.S.C. § 1254(1). The Cross-Petitioners received the Petition on March 3, 1989. This Cross-Petition is filed pursuant to Rule 19.5 of the Rules of The Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Code, Title 25 § 194. *Trial of right of property; burden of proof.*

> In all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership. R.S. § 2126.

Derivation. Act of June 30, 1834, C.161, § 22, 4 Stat. 733.

United States Constitution, Amendment V, Due Process Clause.

> No person shall . . . be deprived of life, liberty or property, without due process of law;

STATEMENT OF THE CASE

This case is a consolidation of suits brought by the Omaha Indian Tribe and the United States as trustee for that Tribe, to quiet title to certain Iowa farm land as being part of the Omaha Indian Reservation. The reservation was established on the Nebraska side of the Missouri River pursuant to a treaty of 1854.

The complaint of the Tribe invoked the jurisdiction of the district court under 28 U.S.C. § § 1331 and 1362. The complaint of the United States invoked the jurisdiction of the district court under 28 U.S.C. § 1345.

The critical factual issue in the case was whether the Missouri River moved over an area, referred to as the Barrett Survey, in an avulsive or accretive manner at various times since 1854. If the movements were avulsive in nature the original reservation boundaries would remain unchanged and the United States and the Tribe would prevail. If the movements were accretive, the land

in question would be Iowa riparian land; it would not be a part of the reservation; and the defendants would prevail. The district court, applying normal burden of proof requirements, placed the burden of proof on the United States and the Tribe; found the movements to be accretive; and held for the defendants, Cross-Petitioners herein.[1] The Eighth Circuit Court of Appeals held that 25 U.S.C. § 194 applied to place the burden of proof on the defendants and reversed.[2]

This case was previously before this Court in 1978 pursuant to its grant of the Petition for Writ of Certiorari of Cross-Petitioners *Wilson, et al.*, (No. 78-160) limited to two questions presented by that petition which were:

> Whether the Eighth Circuit erroneously construed Title 25 U.S.C. § 194 to make it applicable in this case.
>
> Whether the Eighth Circuit erred in holding that Federal and not state common law with regard to accretion and avulsion is applicable in this case.

The Court did not grant certiorari on the question of the constitutionality of 25 U.S.C. § 194 presented in the petition of defendants RGP, Inc. and Otis Peterson in No. 78-162.

In its opinion in *Wilson v. Omaha Indian Tribe*, 442 U.S. 653 (1979), this Court construed 25 U.S.C. § 194 to be applicable to place the burden of proof upon the defendants in this case, except for the State of Iowa to which

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[1] *United States v. Wilson*, 433 F.Supp 57 and 433 F.Supp. 67 (N.D. Iowa W.D. 1977).

[2] *Omaha Indian Tribe v. Wilson*, 575 F.2d 620 (8th Cir. 1978).

the Court held section 194 would not apply; found federal law of accretion and avulsion was controlling, but that the law of Nebraska should be borrowed as the federal rule of decision in this case; and remanded this case to the court of appeals to consider whether the district court had correctly interpreted Nebraska law and had properly applied it to the facts in this case.

The court of appeals on remand again vacated the judgment of the district court, which had quieted title in defendants, and remanded the case to that court with directions to enter judgment quieting title to the trust lands involved, except those claimed by the State of Iowa, in the United States, as trustee for the Tribe.[3]

On remand the district court, on September 8, 1981, entered a Memorandum Opinion and Order quieting title in the United States and the Tribe and ruling adversely to Cross-Petitioners on issues raised by them concerning the title status of certain lands within the Barrett Survey which had been patented in fee and the entitlement of Cross-Petitioners to reimbursement for improvements made to the land.[4]

On appeal to the Eighth Circuit the Cross-Petitioners, in addition to appealing from the adverse rulings on the fee patent land and improvement issues, raised the issue of the constitutionality of 25 U.S.C. § 194, the application of which was a determinative factor in the adverse ruling

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[3] *Omaha Indian Tribe v. Wilson*, 614 F.2d 1153 (8th Cir. 1980) *cert. denied* 449 U.S. 825 (1980).

[4] *United States v. Wilson*, 523 F.Supp. 874 (N.D. Iowa 1981).

on the issue of ownership of the entire land in controversy. The court of appeals reversed on the issues of fee patent land and improvements and remanded the case once again to the district court for further proceedings but made no ruling on the issue of the constitutionality of 25 U.S.C. § 194.[5] This Court denied Cross-Petitioners Petition For a Writ of Certiorari from that decision seeking review by this Court of the constitutionality of 25 U.S.C. § 194.[6]

On January 13, 1984 the district court issued its Memorandum decision finding that no party having the burden of proof in this case could sustain that burden.[7] Accordingly, the district court held that title to approximately 1900 acres of land within the Barrett Survey would be quieted in the United States as Trustee for the Tribe conditioned upon the reimbursement by the United States to the Cross-Petitioners for permanent improvements to the land made by them and their predecessors; quieted title in the State of Iowa to approximately 670 acres; and quieted title in the Cross-Petitioners to approximately 300 acres of fee patent land. On May 29, 1987 the district court entered its Final Judgment and Decree, as modified on June 30, 1987, consistent with the Memorandum (App.B p16a).[8] From this Final Judgment and Decree

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[5] *United States v. Wilson*, 707 F.2d 304, as modified on rehearing, 707 F.2d 311 (8th Cir. 1983).

[6] *United States v. Wilson*, 465 U.S. 1025 (1983).

[7] *United States v. Wilson*, 578 F.Supp. 1191 (N.D. Iowa 1984).

[8] References to (App.___ p___) are to the Appendix exhibit and page of the Appendix to the Petition For Writ of Certiorari of the Omaha Indian Tribe in 88-1426.

the Tribe and the United States appealed separately to the court of appeals, and the Cross-Petitioners cross appealed seeking, once again, a review of the constitutionality of 25 U.S.C. § 194. The court of appeals upheld the constitutionality of 25 U.S.C. § 194, *Omaha Indian Tribe v. Jackson*, 854 F.2d 1089 (8th Cir. 1988) (App.C). The Tribe in No. 88-1426 has petitioned for a writ of certiorari with respect to this ruling of the court of appeals. The Cross-Petitioners in this Cross-Petition seek a writ of certiorari on the question of the constitutionality of 25 U.S.C. § 194.

REASONS FOR GRANTING THE CROSS-PETITION

The decisive impact of 25 U.S.C. § 194 on this litigation has been noted by both the district court and the court of appeals.[9] The district court in its 1984 Memorandum decision, on the basis of which the Final Judgment and Decree was entered, summed up the impact of the statute as follows:

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[9] The court of appeals stated: "We recognize that to require the defendants to prove the cause of the river's movements occurring some 100 years after the event is indeed an onerous burden." *Omaha Indian Tribe v. Wilson*, 575 F.2d 620, 651. The district court observed:

> There can be no doubt, however, that 25 U.S.C. § 194 has been a determinative factor in the outcome of this case. In the appellate stages of this proceeding, this previously untested statute operated to shift the ordinary burden of proof in a quiet title action to the individual defendants. This enormous burden included the task of describing the nature of river movements which occurred beginning over 100 years ago.

United States v. Wilson, 523 F.Supp. 874, fn. 19.

> After eight years of litigation and appeals, land ownership in this case is not decided on the merits. All disputes involving the 2900 acres of land are settled simply by the apportionment of the burden of proof. The Tribe originally won its claim to 2200 acres because of the allocation of the burden which resulted from application of Section 194. The court of appeals held that the defendants claiming the 2200 acres simply failed to meet the burden according to the court of appeals. The State of Iowa and defendants claiming fee patent land prevail here because of application of the burden of proof, absent the aid of Section 194. The Tribe failed to sustain its burden.
>
> The Court happened upon an ancient legal maxim which appears appropriate here, "Idem est non probari et non esse; non deficit jus, sed probatio." Roughly translated, "What is not proved and what does not exist are the same; it is not a defect of law, but of proof." Black's Law Dictionary, 5th ed. (1979). (App.A p15a)

Although Section 194, which allocates the burden of proof based upon the race of the parties, would seem almost to compel a thorough constitutional review, the constitutionality of that statute has received only slight attention in this case. In a footnote to the first opinion of the court of appeals, the constitutional question was dismissed with a brief reference to this Court's decision in *Morton v. Mancari*, 417 U.S. 535 (1974).[10] The court of appeals, though asked again to consider this issue in

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[10] In footnote 18 to its opinion in *Omaha Indian Tribe v. Wilson*, 575 F.2d 620, 631 (1978) the court of appeals said:

(Continued on following page)

United States v. Wilson, 707 F.2d 304 (8th Cir. 1982) failed even to mention it. When raised for a third time in *Omaha Indian Tribe v. Jackson*, 854 F.2d 1089 (8th Cir. 1988), the court disposed of the question in one brief paragraph:

> Finally, the private defendants claiming non-fee patent reservation land held in trust by the government maintain that 25 U.S.C. § 194 effects an invidious discrimination on the basis of race contrary to the due process clause of the fifth amendment. We cannot agree. This court's decision in *Omaha I* with respect to this issue is the law of the case, and the private defendants have provided no basis which either compels or justifies this court's reconsideration. *See*, 575 F.2d at 631 n. 18; *see also Handi Inv. Co. v. Mobil Oil Corp.*, 653 F.2d 391, 392 (9th Cir. 1981) (citing *Kimball v. Callahan*, 590 F.2d 768, 772 (9th Cir.) *cert. denied*, 444 U.S. 826, 100 S.Ct. 49, 62 L.Ed.2d 33 (1979); *White v. Murtha*, 377 F.2d 428 (5th Cir. 1967). (App.C p47a)

(Continued from previous page)

The defendants question the constitutionality of 25 U.S.C. § 194. In discussing the validity of laws granting special treatment to Indians the Supreme Court emphasized in *Morton v. Mancari*, 417 U.S. 535, 554-55, 94 S.Ct. 2474, 2485, 41 L.Ed.2d 290 (1974), that:

> On numerous occasions this Court specifically has upheld legislation that singles out Indians for particular and special treatment. This unique legal status is of long standing and its sources are diverse. As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed.

Rather than face the constitutional issue squarely the court chose to ignore it, rationalizing that its earlier treatment of the subject in a footnote was "law of the case."[11]

In upholding the constitutionality of 25 U.S.C. § 194 the court of appeals has, within the meaning of Rule 17.1(c) of the Rules of the United States Supreme Court, "decided an important question of federal law which has not been, but should be settled by this Court," and it has decided that question "in a way in conflict with applicable decisions of this Court."

The potentially enormous impact of Section 194 in future cases involving Indian land claims should be apparent. The reversal of the burden of proof in such cases will be triggered under the statute whenever the Indian or Indian Tribe, or the United States as its "champion," demonstrates that it was "once in possession of or had title to the area in dispute."[12] As the circumstances of this case demonstrate, the remoteness in time of the last Indian possession is immaterial. Any tribal possession in the instant case ceased at least by 1912. With respect to much of the land within the Barrett Survey, it ceased even before that as the Missouri River moved back and forth across the area in the latter part of the 19th century.

The reversal of the normal burden of proof requirements coupled with the inability of defendants in cases

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[11] The Cross-Petitioners, it should be noted, did not raise the constitutional issue on the first appeal, nor would they have had any reason to, since they were appellees, having obtained a judgment from the district court dismissing the plaintiffs' quiet title actions.

[12] *Wilson v. Omaha Indian Tribe*, 442 U.S. 653, 668.

such as this to rely upon statutes of limitations or laches defenses, creates almost insurmountable obstacles to the defense of Indian land claims brought by the Tribes or the United States.[13] When the full resources of the United States government are brought to bear on behalf of the Indian claimants, as they have been in this case, the burden is overwhelming.

The instant case demonstrates exactly the consequences of a combination of these forces. The ultimate determination of the lower courts in this case is that neither side in this litigation has been able to convincingly demonstrate the nature of river movements occurring almost a century ago which are critical to this case. The evidence on both sides has necessarily involved the "educated guesses" of expert witnesses which the court of appeals has found to be speculative and not sufficient to sustain a burden of proof.[14] Nevertheless, because Section 194 automatically places the burden of proof on the defendants, the United States and the Tribe are able to

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[13] The federal courts have consistently held that limitations defenses cannot be asserted against Indian land claims brought by tribes or the United States. *See*, e.g. *United States v. 7,504.3 Acres of Land*, 97 F.2d 417 (4th Cir. 1938); *Oneida Indian Nation of New York v. County of Oneida*, 434 F.Supp. 527 (N.D. N.Y. 1977); *Schaghticoke v. Kent School Corp.*, 423 F.Supp. 780 (D. Conn. 1976); *Narragansett Tribe of Indians v. Southern Rhode Island Land Development Co.*, 418 F.Supp. 798 (D.Rhode Island 1976).

[14] The court of appeals in its second opinion, *Omaha Indian Tribe v. Wilson*, 614 F.2d 1153, 1160, commented: "Evidence of river movements in the critical periods too often gives no more than a basis for an 'educated guess', in the words of defendant's expert witness, Dr. George Hallberg."

reclaim land on the Iowa side of the Missouri River which the Tribe had neither occupied nor claimed for almost a half century before instituting this litigation.

The constitutional validity of 25 U.S.C. § 194, it is submitted, is a question of great significance to all pending and future litigation involving Indian land claims. The instant case shows so clearly the impact that Section 194 can have on that type of litigation. It presents a very appropriate context in which to examine the constitutionality of the racial preference granted by Section 194.

This Court's decision in *Fullilove v. Klutznick*, 448 U.S. 448 (1980) is the most recent consideration by this Court of the constitutionality of an Act of Congress which mandates a preference based upon race. *Fullilove* is placed in still sharper focus by the Court's very recent decision in *City of Richmond v. Croson*, ___ U.S. ___ (1989). Unlike racially preferential "remedial" state action which, under the plurality opinion in *Croson*, must meet the traditional "compelling governmental interest" and "narrowly tailored means" tests, similar federal action is subject to a less stringent review. Under *Fullilove*, the analysis is twofold. The first inquiry must be "whether the *objectives* of the legislation are within the power of Congress."[15] Second, it must be determined "whether the limited use of racial and ethnic criteria, in the context presented, is a constitutionally permissible *means* for achieving the congressional objective . . . "[16] The Court recognized the "need for careful judicial evaluation to assure that any

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[15] *Fullilove v. Klutznick*, 448 U.S. 448, at 473.

[16] *Id.* at 473.

congressional program that employs racial or ethnic criteria to accomplish the objective of remedying the present effects of past discrimination is narrowly tailored to the achievement of that goal."[17]

It is submitted that 25 U.S.C. § 194 fails to meet any of the standards of *Fullilove*. The statute operates directly to disadvantage the white person or non-Indian in disputes with Indians over property rights. There is no articulated basis in the legislative history of this statute which reveals the "objective" which the Congress intended to further in enacting this statute. In fact, as this Court has conceded, there is no legislative history at all upon which to rely in ascertaining the Congressional intent or purpose underlying that statute. "The legislative history here is uninformative, and executive interpretation is unhelpful with respect to this dormant statute." *Wilson v. Omaha Indian Tribe*, 442 U.S. 653, 667.

Without such an articulated objective, it cannot be determined, under the tests of *Fullilove*, whether that objective is within the power of Congress and whether the racial preference granted in that statute is a constitutionally permissible means for accomplishing that objective.

The court of appeals in its only comment upon the constitutionality of Section 194 referred to this Court's decision in *Morton v. Mancari*, 417 U.S. 535 (1974). *Morton* upheld a statute granting Indians an employment preference with the Bureau of Indian Affairs. The court of appeals interpreted *Morton* as supporting the proposition

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[17] *Id.* at 479.

that Indians may be singled out by Congress "for particular and special treatment." *Omaha Indian Tribe v. Wilson*, 575 F.2d 620, 631 n.18. *Morton* cannot be read so broadly. The Court in *Morton* was careful to emphasize that the employment preference at issue was a "political" preference and not a racial preference in that the special treatment was accorded to Indians not as a racial group, but as members of quasi-sovereign tribal entities.[18] Subsequent cases upholding special Indian legislation in the face of equal protection challenges do so on the grounds that the special treatment is not based upon race but upon the unique legal status of Indian tribes vis-a-vis the United States. The distinction is stated in *United States v. Antelope*, 430 U.S. 641, 646 (1977).

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[18] *Morton v. Mancari*, 417 U.S. 535, 553, 554 (1974). The limits of the type of classification approved in *Morton* was stressed again in the Court's opinion in *University of California Regents v. Bakke*, 438 U.S. 265 (1978):

> Petitioner also cites our decision in *Morton v. Mancari*, 417 U.S. 535, 41 L.Ed.2d 290, 94 S.Ct. 2474 (1974), for the proposition that the State may prefer members of traditionally disadvantaged groups. In *Mancari*, we approved a hiring preference for qualified Indians in the Bureau of Indian Affairs of the Department of the Interior (BIA). We observed in that case, however, that the legal status of the BIA is sui generis. *Id.*, at 554, 41 L.Ed.2d 290, 94 S.Ct. 2474. Indeed, we found that the preference was not racial at all, but "an employment criterion reasonably designed to further the cause of Indian self-government and to make the BIA more responsive to . . . groups . . . whose lives and activities are governed by the BIA in a unique fashion." *Ibid.*
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> 438 U.S. 265, 304 fn.42

> Both *Mancari* and *Fisher* involved preferences or disabilities directly promoting Indian interests in self-government, whereas in the present case we are dealing not with matters of tribal self-regulation, but with federal regulation of criminal conduct within Indian country implicating Indian interests. But the principles reaffirmed in *Mancari* and *Fisher* point more broadly to the conclusion that federal regulation of Indian affairs is not based upon impermissible classifications. Rather, such regulation is rooted in the unique status of Indians as "a separate people" with their own political institutions. Federal regulation of Indian tribes, therefore, is governance of once-sovereign political communities; it is not to be viewed as legislation of a "'racial' group consisting of 'Indians' . . . ." *Morton v. Mancari, supra,* at 553 n.24, 94 S.Ct., at 2484.

In contrast with the legislation examined and upheld in *Morton,* and *Antelope,* and also in *Fisher v. District Court,* 424 U.S. 382 (1976)[19] and *Delaware Tribal Business Comm. v. Weeks,* 430 U.S. 73 (1977),[20] 25 U.S.C. § 194 has nothing to do with the political relationship between Indian tribes and the United States or between the individual Indian and the tribe. The statute draws a bright racial line. It is cast in terms of "an Indian" – literally an individual Indian – and a "white person." The preference is granted to the Indian regardless of tribal status. It

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[19] *Fisher* involved the exclusive jurisdiction of tribal courts under the Indian Reorganization Act, 25 U.S.C. § 476, which precluded access to state courts in adoption matters involving tribal Indians.

[20] *Weeks* involved Congressional legislation, 25 U.S.C. §§ 1291-1297, authorizing distribution of funds to certain Delaware Indians but excluding others.

directly prefers the Indian whose property interests come in conflict with those of the non-Indian. The "property" referred to in the statute is not limited to tribal or reservation property. Indeed, so broad is the statute that it could very well apply in a fence dispute between Indian and non-Indian neighbors owning adjoining residential lots in a city. In no sense is the classification of Section 194 "political" in nature so as to justify application of the more liberal standard of review enunciated in *Morton, Weeks, Fisher,* and *Antelope.*

Finally, 25 U.S.C. § 194 does not even meet the standard of *Morton,* were that standard to apply. The preference granted in Section 194 cannot be said to be "tied rationally to the fulfillment of Congress' unique obligation toward Indians." The Court, even where it has applied this more liberal standard, has cautioned that it will "scrutinize Indian legislation to determine whether it violates the equal protection component of the Fifth Amendment," *Delaware Tribal Business Committee v. Weeks,* 430 U.S. 73, 84 (1977). No such judicial scrutiny of 25 U.S.C. § 194 has taken place in this case.

Implicit in the Court's decision in *Wilson v. Omaha Indian Tribe, supra,* is that the original purpose of the statute when it was enacted in 1834 was to provide remedies against non-Indian squatters on Indian land by offsetting any unfair advantage the non-Indian might have. However, the statute is certainly not "narrowly tailored" to accomplish this purpose if, indeed, that is its purpose. Even if the statute may once have had a "rational tie," that tie has been lost as Indians have attained much greater access to the courts and much greater resources with which to litigate land ownership claims.

As is so clearly apparent from the circumstances of the instant case, the Indian plaintiffs have been able to enlist the vast resources of the United States Department of Justice and the Bureau of Indian Affairs in litigating the title claim. The United States, in fact, is the original plaintiff and brought suit on behalf of the Tribe. Section 194, by reversing the normal burden of proof in a case such as this, has only served to give the United States and the Tribe a further and unconscionable advantage. Surely, in these circumstances, the statute serves no purpose in offsetting any "advantage" presumed to exist on the side of the non-Indian claimant.

Furthermore, if the purpose of 25 U.S.C. § 194 is to equalize the relative positions of the Indian and non-Indian litigant, this purpose is hardly served by exempting from its coverage a state – whose "advantage" over the Indian would seem even more decisive – as was done in *Wilson*.

The application of 25 U.S.C. § 194 has produced in this case precisely the kind of irrational result which might be expected when a case is decided on the basis of who the litigants are rather than upon the truth of their claims. Although the Missouri River moved in the same way (whether by avulsion or accretion) over all of the Barrett Survey land in controversy at the various times in question,

(a) Iowa will retain ownership of its land because Section 194 does not apply to it;

b) Cross-Petitioners will retain the fee patent land because Section 194 does not apply within this "area";

(c) Cross-Petitioners will lose the rest of the land because they are "white persons," and Section 194 applies to them.

CONCLUSION

The result in this case is the best demonstration, if any is needed, why this Court should grant this Cross-Petition and undertake a complete constitutional review of the racial preference granted in 25 U.S.C. § 194.

RESPECTFULLY SUBMITTED,

ROBERT J. BECKER and
DONALD J. BURESH
Counsel for Respondents John R. Wilson, Charles E. Lakin, Florence Lakin and Harold Jackson

THOMAS R. BURKE and
LYMAN L. LARSEN
Counsel for Respondents John R. Wilson and Harold Jackson

PETER J. PETERS
Counsel for RGP, Inc. and Otis Peterson